In the High Court of Judicature at Madras

Dated:06.02.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.599 OF 1997

1. Shantha Mani
2. Jayalakshmi
3. Dhanalakshmi
4. Premavathi ..Appellants/ Plaintiffs

v

1. Palaniammal
2. Venugopal
3. Sushila Devi ..Respondents/ Defendants

This second appeal is filed against the judgment and decree dated 31.7.1995 made in A.S.No.241 of 1993 on the file of the Court of first Additional District Judge, Salem confirming the decree and Judgment dated 5.5.1993 in O.S.No.69 of 1985 on the file of the Court of Subordinate Judge,Sankari.

For Appellants : Mr.V.Ramajagadeesan
For Respondents : Mr.D.S.Philip

JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.241 of 1993 on the file of the Court of I Additional District Court, Salem. The plaintiffs in O.S.No. 69 of 1985 on the file of Court of Sub Court, Sankari are the appellants herein. The plaintiffs who have lost their case before the Courts below have preferred this second appeal.

2. The short facts of the case of the plaintiffs in the plaint relevant for the purpose of deciding this appeal are as follows:
The plaintiffs are the daughters of Ramasamy Chettiar, who is the brother of the first defendant. The first defendant had two more brothers by name Venkatappa Chettiar and Rangasamy Chettiar. The said four brothers were members of a joint family. The plaintiffs' father and his brothers partitioned their joint family

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properties on 9.12.1940 under a registered partition deed. Thus,the status of the joint family between the said brothers came to an end and thereafter they have been doing business of their own and were acquiring properties in their own names. The plaint schedule property was purchased by the plaintiffs' father Ramasamy Chettiar for proper and valid consideration on 14.1.1953 under a registered sale deed from one Subramania Chettiar and his sons. From the date of purchase, Ramasamy Chettiar was paying land tax to the suit property and was also in possession and enjoyment of the same and has improved the suit property considerably. The first defendant who is none other than the paternal uncle of the plaintiffs owns two houses bearing Door Nos.3 and 5 in Seeranga Chettiar Street in Komarapalayam and is living there with his family. The said houses are situate in a narrow street with no proper access for vehicular use. The two houses of the first defendant are not contiguous and the houses were not sufficient for the accommodation of the first defendant and his family. The first defendant approached the plaintiffs' father in or about January 1972 requesting him to permit the first defendant to occupy the suit property,which is a house, till lthe first defendant could construct a convenient house of his own for his family use. Considering the relationship and the fact that the suit property was vacant, the plaintiffs' father permitted the first defendant in January 1982 to occupy the suit house, and the first defendant in pursuance of the said permission occupied the suit house and promised to vacate the suit house as and when he put up a separate house. Thus, the first defendant was inducted in possession of the house as a Licensee.

2a) Subsequently, the first defendant put up his own constructions in Cauvery Street. The plaintiffs' father, in March 1976 cancelled the Licence granted to the first defendant and demanded the possession of the suit house. The first defendant is dragging to vacate the said house on the ground that his new construction is pending completion. Hence November 1978, he again demanded the first defendant to deliver possession of the suit house. The first defendant completed constructing his house in or about 1979 January, but failed to vacate the suit house.

2b) The plaintiffs' father by a registered settlement deed dated 5.3.1979 settled the suit house in the name of plaintiffs and they have been paying the property tax to the Municipality. After the settlement in their favour, the plaintiffs also demanded the first defendant to deliver possession, but he has not handed over the possession. Hence the suit notice was issued by the plaintiffs on 23.5.1982 to the first defendant calling upon him to vacate and deliver the vacant possession of the suit property. The first defendant was served with a notice on 25.5.1982. Hence the

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plaintiffs are constrained to file this suit for declaration of plaintiffs' title, for delivery of vacant possession and for damages at the rate of Rs.250/- per month from the date of suit till the date of delivery and for costs.

3. Defendants 1 and 2 have filed a joint written statement contending as follows:
The plaintiffs are the daughters of Ramasamy Chettiar, who is the brother of the defendant. The defendant has two more brothers by name Vengadappa Chettiar and Rangasamy Chettiar. The said four brothers including their father V.R.Sikkappaiah Chettiar of Komarapalayam were members of a joint Hindu undivided family which owned certain properties. The defendant and his two brothers were doing business in Malaysia and making regular remittance out of their business earnings in Malaysia to the said Ramasamy Chettiar who was at that time at Komarapalayam in India. The said Ramasamy Chettiar was also simultaneously doing business at Komarapalayam purely out of the funds received from his brothers on behalf of the joint family. For convenience, most of the properties were purchased in the name of the said Ramasamy Chettiar. Thus, they were holding all such properties as tenants-in-common. Each member of the joint family held certain properties in their possession and continued to enjoy the same. In this manner, the defendant had two houses in Seeranga Chettiar Lane in his possession. Similarly the suit property at Door No.18, Cauvery Street, Komarapalayam was also one of the properties that was in the defendants' possession and peaceful enjoyment. Thus, the defendant has been in an uninterrupted possession continuously and peaceful possession enjoyment of the same right from 1955 till now. The defendant had entered into an agreement with his neighbour M.S.Sabapathy Mudaliar for making some additions and alterations in their premsies on 24.11.1956. He has been regularly paying the land tax of the suit house to the Appurajarpalayamchatram Trustees at Komarapalayam to whom the land belongs. He has also been regularly paying the house tax in respect of the suit property to the Komarapalayam Town Panchayat and later to Municipality. There was oral partition in 1968, according to which the shares of each member of the joint family including the said Ramaswamy Chettiar was expressed clearly in equal numerical divisions in the form of schedule as prepared at that time. As such the suit property was one of the properties that come to the defendant's share and thus he acquired and became the absolute owner of the suit property and has been in continuous possession and enjoyment of the same till now. The defendant has thus acquired right, title or interest over the suit property and nobody else. The partition was subsequently confirmed by a Panchayat Award given on 13.4.1973 among the four brothers including the plaintiffs' father. Therefore, the defenant is only the absolute owner of the suit property and nobody else.

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3a) The partition deed of 1940 mentioned above has nothing to do with the partition which took place in the year 1968. The properties mentioned in the partition deed of 1940 were acquired at Komarapalayam as joint family property out of the funds earned from a Textile business jointly in Malaysia in or about 1938 by the defendant and his three brothers. R.Mari Chettiar and Sikkappaiah Chettiar are the sons of V.Rangasamy Chettiar of Komarapalayam. Subsequently, R.Mari Chettiar died leaving his wife, Marakkal. Among the four brothers S.Vengadappa Chettiar was the eldest who was given the major share of the immovable properties that were partitioned among them in 1940 with a view to maintain the said Marakkal, Sikkappaiah Chettiar and his wife Nagammal during their life time and to perform the funeral rites etc., after their death. This partition took place then in view of the differences that arose among the members of the joint family. Therefore, the partition deed has absolutely no connection or relevancy to the partition of 1968. The paritition of 1968 relates to the properties acquired jointly after about 1940 by the defendant and his three brothers out of the trade carried out jointly both in Malaysia and India. The properties partitioned in 1968 among the defendant and his three brothers including the plaintiffs' father was so huge that could not have been acquired in 1940 when the properties partitioned as per the partition of 1940 were very meagre and negligible and as such it bears a clear testimony to the fact that 1940 partition is quiet different from 1968 partition and each has no relevancy or connection whatsoever with the other. It is not correct to say that the plaintiffs' father and brothers partitioned their joint family property on 9.12.1940 itself. It is also not correct to state that the status of the joint family between the brothers came to an end and thereafter they have been doing business of their own and were acquiring properties in their own names. In the light of the above facts, the defendant affirms that the suit property is one of the properties acquired out of the huge joint family properties that are clearly defined in the schedule to the Panchayat Award and that such huge properties could be acquired only during a longer period and by members of the joint family.

3b) It is true that the suit property was purchased in the name of Ramasamy Chettiar out of the joint family funds as stated above only for the purpose of convenience and not from his own self earning as falsely alleged in the plaint. The mere fact that it was purchased in his name and the said sale deed stands in his favour does not render the suit property his separate property for all that is perfectly consistent with the notion of its being joint property as clearly explained above. It is not correct to say that the plaintiffs' father was paying the property tax to the suit property. On the other hand, the first defendant was paying the property tax to the suit property. The plaintiffs' father was never

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in possession and enjoyment of the suit property and has also given any improvement to the suit property. The first defendant is in continuous possession and enjoyment of the suit property right from 1955 till now. The defendants are having two houses bearing door No.3 and 5 in Seeranga Chettiar lane at Komarapalayam and they are indeed situate in a narrow street. The averments in the plaint that the first defendant was in occupation of one of the houses as licensee is incredible and totally a false story concocted for the purpose of this case. After partition in the yer 1968,the plaintiffs' father has no right or title in respect of the suit property. The plaintiffs' father's right has been forefeitued in lieu of the sale deed dated 14.1.1953. The said sale deed became a nullity after the partition in 1968. Likewise, the alleged registered settlement deed dated 5.3.1979 executed in favour of the plaintiffs by their father based on the sale deed dated 14.1.1953 is also void. The first defendant is paying tax to the suit property. The plaintiffs have no right to demand possession from the defendants, since the settlement deed itself is also not valid and is not acted upon. The acquisition of the suit property by the defendant in about 1955 is a valid one. Hence the suit is liable to be dismissed

4. The third defendant has filed additional written statement contending as follows:
It is false to state that the first defendant approached the plaintiffs' father in or about January 1972 requesting him to permit the first defendant to occupy the suit property which is a house till the first defendant could construct a convenient house of his own for his family use. It is equally false to allege that the plaintiffs' father permitted the first defendant in January 1972 to occupy the suit house. The first defendant was inducted in possession of the house as a licensee. There is no question of licensee at all. The defenants are the owners of the suit property and they are in possession and enjoyment of the suit property. The house in the suit land is a leasehold property since it belongs to Appurayapuram Chatram Trustees. The trustees of the above said Appurayapuram Chatram leased out the land for lease and the defendants are paying lease rent to the Appuraya Chatram Trustees. The said Appuraya Chatrams Trustees are also necessary party to the suit. The suit is bad for non joinder of necessary party. The suit is to be dismissed .

5. The plaintiffs have filed a reply statement denying the averments in the written statement filed by the defendants.

6. On the above pleadings, the trial Court had framed seven issues and two additional issues for trial. On the side of the plaintiffs, P.Ws 1 to 3 were examined and Exs A1 to A 36 were marked. On the side of the defendants , D.Ws 1 to 3 were examined

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and Exs B1 to B37 were examined.

7. After going through the oral and documentary evidence let in by both sides, the learned trial Judge has come to a conclusion that the plaintiffs are not entitled to any relief asked for in the plaint and consequently dismissed the suit without costs. Aggrieved by the findings of the trial Judge, the plaintiffs have preferred appeal in A.S.No.241 of 1993 before the first additional District Judge,Salem who also dismissed the appeal confirming the decree and judgment of the trial Court without costs which necessitated the plaintiffs to approach this Court in Second appeal.

8. The substantial question of law involved in this appeal is

> " Whether in law, after a division of family by both in status and metes and bounds, without a plea of reunion, the Courts below have erred in law, in assuming that the business carried on under the name and style of Sikkapaiya Chettiar and Co., was a joint family business and that the suit property was acquired from and out of the income from the said joint family business?

9. The Point:

The plaintiffs are the one of the brothers sons of the first defendant. According to the plaintiffs, their father Ramasamy Chettiar had executed EX A1 settlement deed in respect of the suit property in favour of them on 5.3.1979 and that their father Ramasamy Chettiar got the suit property under Ex A35 sale deed dated 14.1.1953. The plaint schedule property is a house and land measuring east west 27 ¾ feet, north south 100 feet with a house comprised of an extent of 90 sq.metre at Cauveri Street, Pazhiyapettai, Komarapalayam Agraharam, Komarapalayam. EX A1 settlement deed was executed by Ramasamy Chettiar, the father of the plaintiffs on 5.3.1979. In Ex A1, Ramasamy Chettiar has mentioned about the parent document Ex A35 dated 14.1.1953 in order to show how he became entitled to the property. Even in Ex A1, it has been stated that the land conveyed under EX A1 belongs to Appurayapuram Chatram of Kumarapalayam and that the lessee is liable to pay a sum of Rs.7/- per year to the trustees of Appurayapuram Chatram and it has been further directed in Ex A1 that the settlee under Ex A1 have partitioned the house situate in the above said land equally among themselves. The predecessors-in-title viz., Ex A35 dated 14.1.1953 will go to show that one Velayutha Chetty , Arunagiri Chetty and Shanmugamchetty have executed EX A35 in favour of Ramasamy Chettiyar. The schedule to Ex A35 shows that the property sold under Ex A35 belongs to Appurayapuram Chatram Trust and that the trustees viz., Subramani

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Chettiar had executed a lease deed and as per the lease deed the vendor is liable to pay Rs.7/- per year to the said trust and the vendee under Ex A35 was also directed to pay the above said lease amount to the said trust. So it is clear from Ex A35 document itself that settlor under Ex A1 viz., Ramasamy Chettiar had not derived any absolute right in respect of the suit property under Ex A35 and the suit land belongs to the Trust by name Appurayapuram Chatram Trust. If at all, the lease in respect of the suit property is to be created, it can be created only by the trust of Appurayapuram Chatram,but Ex A35 was not executed by the trustees of Appurayapuram Chatram Trust. Only a lessee under the Appurayapuram Chatram Trust viz., Velayutha Chetty , Arunagiri Chetty and Shanmugachetty, have executed Ex A35. The recital in Ex A35 shows that one Subramania Chettiar as a trustee of Apppurayapuram Chatram Trust had executed a lease deed in favour of the vendor under Ex A35. But the said lease deed in favour of the vendors under Ex A35 said to have been executed by Subramania Chettiar as a Trustee of Appurayapuram Chatram Trust was not filed in this case. So it is clear that in Ex A 35 under Ex A1, settlement deed Ramasamy Chettiar has no right to the said property which belonged to Appurayapuram Chatram Trust. The learned first appellate Judge in his Judgment in A.S.No.241 of 1993 at paragraph 13 has clearly observed that under Ex A1 dated 5.3.1979, the settlor viz., Ramasamy Chettiar has no right to execute the same in respect of the suit property which belonged to Appurayapuram Chatram Trust. Both the Courts below have concurrently come to a correct conclusion that under Ex A1 , the plaintififs cannot claim any right in respect of the plaint schedule property which belongs to the Trust.

10. With regard to the house in the suit property, it is the definite case of the brother of Ramasamy Chettiar viz., Govindasamy Chettiar, the first defendant that the house was constructed by him and he is residing in the house. Pending suit, first defendant died. The third defendant is the son of first defendant.4th defendant is the daughter of first defendant.

11. D.W.1 would depose that his father and his brothers Ramasamy Chettiar, Rangaswamy Chettiar, Vengadappa Chettiar had textile business at Malaysia in the name of Chichappaiya Chettiar and Sons and that only from the joint family income, the suit property was purchased by Ramasamy Chettiar under Ex A35 and that the suit house is situate on the west of land purchased under Ex A35 and that the said land in which the suit house is situate was previously a ginning factory was owned by 'Sabapathy Mudaliar and' that the wall on the east and west running north to south to the plaint schedule property is a common wall and that the said ginning factory was purchased by D.W.1's son from Sabapathy Mudaliar and that with regard to the common wall D.W1 and his sons

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entered into an agreement with Sabapathy Mudaliar to provide air and light to his house through the said wall by providing ventilation and that Ex B15 is the said agreement and that from 1955 onwards his father was residing in the said suit house and that Exs A16 to A24 are the house tax receipts. Exs A25 and A27 are the "B" memos issued by the Municipality in respect of the said house. Under such circumstances, it cannot be said that the plaintiffs have derived title in respect of the suit property under EX A1 ie .,in respect of the land as well as the house. Both the Courts below have concurrently held that the plaintiffs are neither entitled to the relief of declaration nor an order of recovery of possession in respect of the suit which is neither illegal nor infirm to warrant any interference from this Court. Point is answered accordingly.

12. In fine, the second appeal is dismissed confirming the decree and Judgment in A.S.No.241 of 1993 on the file of the Court of first Additional District Judge, Salem with costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. 1st Additional District Judge, Salem

2. The Subordinate Judge, Sankari.

3. The Section Officer, VR Section, High Court, Madras.

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